

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Lynchburg Division

LEAGUE OF WOMEN VOTERS OF
VIRGINIA, et al.,

Plaintiffs,

v.

VIRGINIA STATE BOARD OF
ELECTIONS, et al.,

Defendants.

Case No. 6:20-cv-00024-NKM

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs League of Women Voters of Virginia (the “League”), Katherine D. Crowley, Seijra Toogood, Gayle Hardy, Carol D. Petersen, and Tracy Safran (“Plaintiffs”) respectfully move for a preliminary injunction under Federal Rule of Civil Procedure 65(a). They do so to prevent hundreds of thousands of Virginia voters, including Plaintiffs and League members, from being forced to choose between risking their health to vote and disenfranchisement due to Virginia’s absentee ballot witness requirement in the upcoming November 3 general election and any other elections affected by the spread of COVID-19. This witness requirement mandates that absentee ballot voters have another individual witness the voter opening their ballot envelope and have that witness sign the ballot envelope, as stated in Va. Code § 24.2-706 and § 24.2-707 and as interpreted by 1 Va. Admin. Code 20-70-20(B). In support of this Motion, Plaintiffs rely upon the accompanying Brief in Support of Plaintiffs’ Motion for a Preliminary Injunction,¹ and the attached declarations and exhibits.

¹ Plaintiffs filed a consent motion to expand page limits for opening and response briefs from 25 pages to 40 pages.

Plaintiffs are likely to succeed on the merits of their claim that Virginia's witness requirement unconstitutionally burdens the right to vote in light of the COVID-19 outbreak. Because approximately one-quarter of Virginians of voting age live alone, the witness requirement means that these individuals must either risk their health to vote or face disenfranchisement—a burden that falls particularly hard on Virginia's senior citizens, citizens with disabilities, Black citizens, and citizens contending with poverty. The witness requirement offers little, if any, benefit to the Commonwealth's election integrity interests in light of the myriad other election integrity laws and procedures in place and the ineffectiveness of the requirement. Without preliminary relief, Plaintiffs and many thousands of other Virginia voters will face irreparable harm, as detailed in the supporting brief. The balance of the equities and the public interest also favor granting a preliminary injunction, as doing so would support both the right of all eligible Virginians to vote and public health.

Plaintiffs therefore seek a preliminary injunction:

- (1) Prohibiting Defendants from enforcing the witness requirement (as stated in Va. Code § 24.2-706 and § 24.2-707 and as interpreted by 1 Va. Admin. Code 20-70-20(B)) for all Virginia voters for the November 3 general election and for any and all subsequent elections in Virginia until such time as in-person interactions required by compliance with the witness requirement no longer pose a risk to public health and personal safety;
- (2) Ordering Defendants to issue guidance instructing city and county election officials to count otherwise validly cast absentee ballots that are missing a witness signature for the November 3 general election and any future elections during the time period for which the Court orders relief; and
- (3) Ordering Defendants to conduct a public information campaign informing Virginia voters about the elimination of this requirement, in coordination with city and county election officials.

Dated: July 24, 2020

Vishal Agraharkar (VSB #93265)
Eden Heilman (VSB #93554)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF AMERICA, INC.
701 E. Franklin Street, Suite 1412
Richmond, Virginia 23219
Phone: (804) 644-8080
Fax: (804) 649-2733
vagraharkar@acluva.org
eheilman@acluva.org

Respectfully submitted,

/s/ Davin M. Rosborough
Davin M. Rosborough (VSB # 85935)
Dale E. Ho*
Sophia Lin Lakin*
Theresa J. Lee*
Adriel I. Cepeda-Derieux*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 549-2500
drosborough@aclu.org
dho@aclu.org
slakin@aclu.org
tlee@aclu.org
acepedaderieux@aclu.org

Attorneys for Plaintiffs

* Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I certify that on July 24, 2020, I served a copy of the foregoing Plaintiffs' Motion for a Preliminary Injunction on Counsel for Defendants via filing with the Court's CM/ECF system, which will send a copy to counsel for all parties.

/s/ Davin M. Rosborough

Davin M. Rosborough (VSB # 85935)
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 549-2500
drosborough@aclu.org

Counsel for Plaintiffs